



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 13, 2005

Mr. Richard J. McGillivray
Assistant General Counsel
Texas Workers' Compensation Commission
7551 Metro Center Drive, Suite 100, MS-4D
Austin, Texas 78744

Mr. Elias V. Lorenzana, Jr.
Assistant General Counsel
Texas Workers' Compensation Commission
7551 Metro Center Drive, Suite 100, MS-4D
Austin, Texas 78744

OR2005-03156

Dear Mr. McGillivray and Mr. Lorenzana:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your requests for rulings were assigned ID#'s 221903, 222020, 222794, and 223820. We have combined your requests for a single ruling under ID# 221903.

The Texas Workers' Compensation Commission (the "commission") received nine requests from seven requestors for information relating to four named doctors and related matters. You inform us that the commission is releasing some of the requested information. You inform us that other requested information does not exist.¹ You claim that other responsive information is excepted from disclosure under section 552.101 of the Government Code.

¹The Act does not require the commission to release information that did not exist when it received this request or to create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

You also assert that the public availability of the requested information is governed by previous determinations issued to the commission under section 552.301. We have considered your arguments and have reviewed the information you submitted.²

Initially, we address your reliance on the three previous determinations recently issued to the commission. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination).³ Open Records Letter No. 2004-9096 (2004) authorizes the commission to withhold claim file information relating to a workers' compensation claimant who is identified by the requestor under section 402.083 of the Labor Code, unless the information is subject to release under sections 402.084 or 402.085 of the Labor Code or other provisions of law. Open Records Letter No. 2005-00409 (2005) authorizes the commission to withhold information in an investigative file maintained under section 414.005 of the Labor Code under section 402.092 of the Labor Code, unless the information is subject to release provisions found in section 402.092 or other provisions of law or is claim file information subject to section 402.092(c). Open Records Letter No. 2005-01938 (2005) authorizes the commission to withhold information in an investigative file maintained under sections 413.002, 413.0511, or 413.0512 of the Labor Code under section 402.092 of the Labor Code, unless the information is subject to release provisions found in section 402.092 or other provisions of law or is claim file information subject to section 402.092(c).

You assert that these previous determinations are applicable to the information to which the present requestors seek access. You do not inform us of any change in the law, facts, and circumstances on which two of the prior rulings are based. Based on your representations and our review of the information at issue, we agree that the commission must dispose of most of the submitted information in accordance with Open Records Letter Nos. 2005-00409 (2005) and 2005-01938 (2005). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

²This letter ruling assumes that the submitted representative sample information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the commission to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

³The second type of previous determination under section 552.301(a) pertains to clearly delineated categories of information and requires that all of the following criteria be met: (1) the requested records or information at issue fall within a specific, clearly delineated category of information about which this office has previously rendered a decision; (2) the previous decision is applicable to the particular governmental body or type of governmental body from which the information is requested; (3) the previous decision concludes that the specific, clearly delineated category of information is or is not excepted from disclosure under the Act; (4) the elements of law, fact, and circumstances are met to support the previous decision's conclusion that the requested records or information at issue is or is not excepted from required disclosure; and (5) the previous decision explicitly provides that the governmental body or bodies to which the decision applies may withhold the information without the necessity of again seeking a decision from this office. Open Records Decision No. 673 at 7-8 (2001).

We note, however, that the previous determination issued in Open Records Letter No. 2004-9096 (2004) is applicable only when the requestor seeks access to claim file information *and identifies the claimant to whom the information pertains*. The present requests are for information relating to four named doctors, rather than for claim file information relating to any specific workers' compensation claimant. Thus, Open Records Letter No. 2004-9096 is not applicable to any claim file information that is responsive to the present requests. Likewise, because the previous determinations issued in Open Records Letter Nos. 2005-00409 (2005) and 2005-01938 (2005) do not encompass claim file information that is subject to section 402.092(c) of the Labor Code, those decisions do not encompass any claim file information that is responsive to the present requests.⁴ Therefore, to the extent that the submitted documents contain claim file information, we must address the public availability of those records.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Section 402.083 of the Labor Code provides that "[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this subtitle." This office has interpreted section 402.083 to protect only that "information in or derived from a claim file that explicitly or implicitly discloses the identities of employees who file workers' compensation claims." Open Records Decision No. 619 at 10 (1993). Prior decisions of this office have found that information revealing the date of injury, as well as an injured employee's name, beneficiary name, commission claim number, social security number, home telephone number, home address, and date of birth implicitly or explicitly identifies claimants and is therefore excepted from disclosure under section 552.101 in conjunction with section 402.083 of the Labor Code. Only in those cases where release of the employer's identity would reveal the claimant's identity may the identity of an employer be withheld. You do not inform us, and it is not otherwise clear to this office, that any of the claim file information at issue here is subject to release under sections 402.084 or 402.085 of the Labor Code. Therefore, to the extent that the submitted information consists of claim file information that implicitly or explicitly identifies claimants, any such information is confidential under section 402.083 of the Labor Code and must be withheld pursuant to section 552.101 of the Government Code.

In summary: (1) to the extent that the submitted information consists of claim file information that implicitly or explicitly identifies claimants, such information must be withheld under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code; and (2) the commission must dispose of the rest of the submitted information in accordance with Open Records Letter Nos. 2005-00409 (2005) and 2005-

⁴Section 402.092(c) provides that "[i]nformation in an investigation file that is information in or derived from a claim file, or an employer injury report or occupational disease report, is governed by the confidentiality provisions relating to that information." Lab. Code § 402.092(c).

01938 (2005). As we are able to make these determinations, we do not address your other arguments against disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

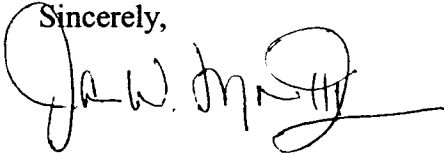
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 221903

Enc: Submitted documents

c: Ms. Misty McEacharn
Johnson DeLuca Kennedy & Kurisky
1221 Lamar Street, Suite 1000
Houston, Texas 77010
(w/o enclosures)

Mr. John Chosy
Perez & Piette, P.C.
300 Mexico Boulevard
Brownsville, Texas 78520
(w/o enclosures)

Mr. Michael W. McMahon
Emmett, Cobb, Waits & Kessenich
1515 Poydras Street, Suite 1950
New Orleans, Louisiana 70112
(w/o enclosures)

Ms. Kathryn Tucker
Folger, Wheat & Oppermann, L.L.P.
848 Heights Boulevard
Houston, Texas 77007
(w/o enclosures)

Mr. S. Greg Gallamore
Barker, Lyman, Twining, Weinberg & Ferrell, P.C.
1221 McKinney Street, Suite 3600
Houston, Texas 77010-2021
(w/o enclosures)

Mr. Mark W. Frasher
Lamb Law Firm
550 Fannin, Suite 1330
Beaumont, Texas 77701
(w/o enclosures)

Mr. David J. Wukoson
4900 Woodway, Suite 900
Houston, Texas 77056
(w/o enclosures)